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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 311

COMMISSIONER OF INTERNAL REVENUE,
PETITIONER,

vs.

JEAN F. STERN, TRANSFEREE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 25, 1957

CERTIORARI GRANTED OCTOBER 14, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 311

COMMISSIONER OF INTERNAL REVENUE,
PETITIONER,

VS.

JEAN F. STERN, TRANSFEREE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

INDEX

	Original	Print
Proceedings in U.S.C.A. for the Sixth Circuit	1	1
Record from the Tax Court of the United States	1	1
Docket entries	1	1
Petition for redetermination	2	2
Attachment—Deficiency letter to Mrs. Stern from Commissioner, dated August 17, 1953	4	4
Statement	5	5
Answer	6	6
Reply	9	9
Stipulation of facts	12	11
Memorandum opinion, Murdock, J.	16	14
Decision	17	16
Minute entry of argument and submission (omitted in printing)	21	
Judgment	21	13
Opinion, McAllister, J.	25	17
Clerk's certificate (omitted in printing)	35	
Order extending time to file petition for writ of certiorari	37	26
Order allowing certiorari	39	27

[fol. a]

IN THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 12,840

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

JEAN F. STERN, Transferee, Respondent.

Petitioner's Appendix—Filed April 10, 1957.

[File endorsement omitted.]

[fol. 1] IN THE TAX COURT OF THE UNITED STATES

DOCKET ENTRIES

1953

Nov. 16—Petition received and filed. Taxpayer notified.
Fee paid.

Nov. 17—Copy of petition served on General Counsel.

Nov. 16—Request for Circuit hearing in Cincinnati, Ohio
filed by taxpayer. 11/30/53—Granted.

1954

Jan. 8—Answer filed by General Counsel.

Jan. 14—Copy of answer served on taxpayer, Cincinnati,
Ohio.

Feb. 15—Reply to answer filed by taxpayer. Copy served.

June 21—Hearing set Sept. 20, 1954, Cincinnati, Ohio.

Aug. 19—Motion for a continuance filed by General Coun-
sel. 8/20/54—Granted.

1955

Mar. 21—Hearing set June 13, 1955, Cincinnati, Ohio.

June 14—Hearing had before Judge Murdock on the
merits, Stipulation of Facts filed at hearing, Briefs due
7/29/55; Replies due 8/29/55. Appearance of Walter E.
Barton, Esq. filed at hearing.

July 1—Transcript of Hearing 6/14/55 filed.

1955

July 29—Brief filed by taxpayer—11/25/55—Copy served.

July 29—Motion for extension to Sept. 29, 1955 to file brief by General Counsel. 8/4/55—Granted.

Sept. 29—Motion for extension to Oct. 29, 1955 to file brief filed by General Counsel. 10/4/55—Granted.

Oct. 31—Motion for extension to Nov. 28, 1955 to file brief filed by General Counsel. 10/4/55—Granted.

Nov. 23—Brief filed by Respondent. Served 11/25/55.

[fol. 2] 1956

Jan. 26—Memorandum findings of fact and opinion filed, Judge Murdock, Decision will be entered for the Respondent. 1/27/56—Copy served.

Jan. 27—Decision entered, Judge Murdock, Div. 3.

Feb. 7—Petition for Review by U. S. Court of Appeals for the Sixth Circuit with assignments of error filed by petitioner.

Feb. 7—Statement of Points on Review, filed by Petitioner.

Feb. 7—Designation of record with statement of service by mail thereon, filed by Petitioner.

Feb. 7—Proof of service of petition for review and statement of points filed.

IN THE TAX COURT OF THE UNITED STATES

PETITION FOR REDETERMINATION—Received and Filed
November 16, 1953

I

The petitioner, Jean F. Stern, herewith petitions this honorable Court for the relief of a deficiency of Federal income tax as determined in a 90 day letter from T. Coleman Andrews, Commissioner of Internal Revenue by H. R. Kasson, Associate Chief, Appellate Division, U. S. Treasury Department, as disclosed by a letter dated August 17, 1953; copy of said letter is attached hereto.

II

The deficiency as transferee of the Estate of Milton J. Stern, deceased, transferor, for the year ending December

31, 1944, income tax \$4,675.74, penalty \$2,337.87; for the year ending December 31, 1945, income tax \$6,470.01, penalty \$3,235.01; for the year ending December 31, 1946, income tax \$6,645.70, penalty \$3,322.85; for the year ending December 31, 1947, income tax \$3,885.27, penalty \$2,205.06.

[fol. 3]

III

The petitioner alleges that she is not the transferee of the Estate of Milton J. Stern, deceased. The petitioner states that at no time did the petitioner receive any assets as transferee from the Estate of Milton J. Stern. The petitioner further states that she is not the recipient as transferee of the Estate of Milton J. Stern of an amount of \$21,676.72 as alleged tax nor of an amount of \$11,100.79 alleged as penalty for income tax of Milton J. Stern, deceased. The petitioner is not an heir, legatee, devisee, or distributee of the alleged transferor or of the Estate of Milton J. Stern. The alleged transferor was not insolvent at any time.

IV

Wherefore, the petitioner, J. F. Stern, prays this honorable Court that she not be held liable as transferee of the Estate of Milton J. Stern, deceased, transferor, or in any amount as alleged in the proposed deficiency by the Commissioner and that she be further absolved of all and any liability as transferee.

(Signed) William H. Beck, 705 Security Trust Bldg.,
Lexington, Kentucky, Attorney for Petitioner.

[fol. 4]

ATTACHMENT TO PETITION

Deficiency Letter

U. S. Treasury Department, Office of the District Commissioner, Internal Revenue Service, Cincinnati Region, Appellate Division

Room 621 Federal Building, Louisville 1, Kentucky,
August 17, 1953

Registered.

Mrs. Jean F. Stern, 114 Dentaler Court, Lexington, Kentucky.

DEAR MRS. STERN:

You are advised that the determination of the income tax liability of the Estate of Milton J. Stern, Deceased, Lexington, Kentucky; for the taxable years ended December 31, 1944, December 31, 1945, December 31, 1946, and December 31, 1947, discloses a deficiency of \$21,676.72 and penalty of \$11,000.79, as shown in the statement attached. The amount of the deficiencies stated, together with penalty, and interest as provided by law, constituting your liability as transferee of assets of the Estate of Milton J. Stern, Deceased, will be assessed against you.

In accordance with existing internal revenue laws, notice is hereby given of the deficiencies mentioned and of your transferee liability.

Within 90 days from the date of the filing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiencies and for your liability as transferee. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday or legal Holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise, Saturdays, Sundays, and legal holidays are to be counted in the computing the 90-day period.

[fol. 5] Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Regional Commissioner, Appellate Division, Federal Building, Louisville 1, Kentucky. The signing and filing

of this form will expedite the closing of your returns by permitting an early assessment of the liability, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours, T. Coleman Andrews, Commissioner;
By H. R. Kasson, Associate Chief, Appellate Division.

IN THE TAX COURT OF THE UNITED STATES

STATEMENT

In re: Estate of Milton J. Stern, Deceased, Transferror,
Lexington, Kentucky

Tax Liability for the Taxable Years Ended December 31, 1944, December 31, 1945, December 31, 1946, and December 31, 1947.

Mrs. Jean F. Stern, Transferee, 114 Dantaler Court,
Lexington, Kentucky.

Income Tax

Year	Deficiency	50% Penalty
1944.....	\$ 4,675.74	\$ 2,337.87
1945.....	6,470.01	3,235.01
1946.....	6,645.70	3,322.85
1947.....	3,885.27	2,205.06
Total.....	\$21,676.72	\$11,100.79

[fol. 6] The records of this office indicate that assets of the above-named decedent's estate were transferred to you during the year 1949.

It is held that you, as transferee of assets, are liable, at law or in equity, for deficiencies in Federal income tax and penalties due from the Estate of Milton J. Stern, Deceased, Adalin Stern Wichman, Executrix, for the years 1944 to 1947, inclusive, in the respective amounts above stated, together with interest as provided by law, and such liability is hereby asserted under Section 311 of the Internal Revenue Code.

The 50 per cent penalty shown herein for the taxable years ended December 1944 to December 31, 1947, inclusive, has been asserted in accordance with the provisions of Section 293 (b) of the Internal Revenue Code.

It has been determined that credit for dependents claimed for Miss Theresa Stern, sister, and Mrs. Jessie Stern, mother, are unallowable as the chief support of these individuals was not furnished by Doctor Stern. Surtax exemption for Mrs. Jean F. Stern, wife, is allowed for each of the above-mentioned years.

A copy of this letter and statement has been mailed to your representative, Mr. William H. Beck, 612 Security Trust Building, Lexington, Kentucky, in accordance with the authority contained in the power of attorney executed by you.

IN THE TAX COURT OF THE UNITED STATES

ANSWER—Filed January 8, 1954

Comes now the Commissioner of Internal Revenue by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the petition filed herein admits, denies and alleges as follows:

I and II. Admits the allegations contained in paragraphs I and II of the petition.

[fol. 7] III. Denies the allegations contained in paragraph III of the petition.

IV. Denies generally each and every allegation contained in the petition not hereinabove specifically admitted, qualified or denied.

V. Respondent, for further answer, alleges as follows:

(a) That during the year 1949, the estate of Milton J. Stern, deceased, without consideration, diverted and transferred to petitioner, assets having an aggregate then fair market value of not less than the deficiency in tax, penalties and interest thereon, which are here in dispute.

(b) That by reason of said transfer, without consideration, from the estate of Milton J. Stern, deceased, to petitioner, said estate of Milton J. Stern, deceased, was, or he-

came, insolvent and unable to pay the deficiencies in tax, penalties and interest thereon, here in dispute.

(c) That no part of the deficiencies in tax, penalties and interest thereon, here in dispute, has been paid.

(d) That consequently pursuant to section 311(a)(1) of the Internal Revenue Code, petitioner became, and is now, liable as transferee of the estate of Milton J. Stern, deceased, for the deficiencies in tax, penalties and interest thereon, here in dispute.

VI. Further answering the petition herein, respondent alleges as follows:

(a) That for the years 1944 to 1947, inclusive, Milton J. Stern, (now deceased, whose estate is petitioner's transferor,) filed income tax returns which disclose net income and income tax liabilities in the amounts as follows, to wit:

Year	Net Income	Income Tax
1944.....	\$ 5,885.06	\$ 976.26
1945.....	7,550.57	1,454.67
1946.....	6,759.08	975.49
1947.....	10,262.56*	2,471.65

* Per amended return.

[fol. 8] (b) That for the years 1944 to 1947, inclusive, Milton J. Stern, (now deceased, whose estate is petitioner's transferor,) in fact, derived net income and incurred income tax liabilities in the amounts as follows, to wit:

Year	Net Income	Income Tax
1944.....	\$17,384.01	\$ 5,652.00
1945.....	21,604.28	7,924.68
1946.....	22,864.43	7,621.19
1947.....	20,427.35	6,356.92

(c) That the statements of net income and income tax liabilities contained in the returns filed by Milton J. Stern, (now deceased, whose estate is petitioner's transferor,) as alleged in subparagraph (a), *supra*, were deliberately and purposely made by Milton J. Stern, (now deceased, whose estate is petitioner's transferor,) with the intent to evade tax and to defraud the United States Government of its lawfully due revenue for the taxable years 1944, to 1947, inclusive.

(d) That the principal differences between Milton J. Stern's net income per return and his correct net income for

each of the taxable years 1944 through 1947 inclusive, as set forth above, were the result of his having fraudulently with intent to evade tax omitted from net income per return a portion of the fees paid him by his patients.

(e) That the omissions from net income of said fees were the direct result of Milton J. Stern having falsified and manipulated his books and records for the express purpose of defeating and evading the tax due thereon.

(f) That by reason of Milton J. Stern, (now deceased, whose estate is petitioner's transferor,) willful and intentional understatement of taxable net income and consequent understatement of income tax liabilities for the years 1944 to 1947, inclusive, as aforesaid, the returns of the petitioner's decedent for said years are false and fraudulent, and each of the deficiencies in controversy, due, in whole [fol. 9] or in part, to fraud with intent to evade tax, and that, in addition to the deficiencies in controversy, there are due by and owing from the petitioner's decedent, under the provisions of section 293(b) of the Internal Revenue Code, penalties for the taxable years 1944 to 1947, inclusive, in the respective amounts of \$2,337.87; \$3,235.01; \$3,322.85; and \$2,205.06.

Wherefore, it is prayed that:

1. The petition be denied;
2. The determination of the respondent be in all respect approved;
3. The court find and hold that petitioner is a transferee of the Estate of Milton J. Stern, deceased, and is liable as such for the deficiency in tax and penalties thereon here in controversy.

(Signed) Daniel A. Taylor LGE, Chief Counsel
Internal Revenue Service.

IN THE TAX COURT OF THE UNITED STATES

REPLY—Filed February 15, 1954

The above-named petitioner, for reply to the allegations affirmatively set out by the respondent in his answer, admits and denies as follows:

I

Admits the allegations contained in Paragraphs I and II of the petition.

II

The petitioner alleges that the allegations contained in Paragraph III of the petition are true and further alleges that at no time was Milton J. Stern insolvent; at no time did Milton J. Stern transfer, with or without consideration any property which would defeat the right of his creditors; that there was no attempt by Milton J. Stern to defeat the claim of the respondent nor of any other creditors; all conveyances made by Milton J. Stern or by his estate were made for adequate consideration; at no time was he insolvent.

III

The petitioner contends that each and every statement set out in the petition is true and that a general denial as set out in Paragraph IV of the answer is of no consequence but is merely a general "catchall" denial of the allegations contained in the petition.

IV

In reply to the allegations of the answer, the petitioner denies the statement contained in Paragraph V (a) of the answer that during the year 1949, "the estate of Milton J. Stern, deceased, without consideration, diverted and transferred to the petitioner assets having an aggregate then fair market value of not less than the deficiency in tax, penalties and interest thereon, which are here in dispute." The petitioner alleges that the estate of Milton J. Stern did not, nor has it at any time, transferred to her any assets having an aggregate fair market value of the deficiency in tax, penalties and interest thereon which are here in

dispute. Further the petitioner alleges that if an amount had been transferred to her that said amount is in a sum far less than the tax, penalties and interest herein asserted.

For reply to Paragraph V (b) of the answer as alleged, "that by reason of said transfer, without consideration, from the estate of Milton J. Stern, deceased, to petitioner, said estate of Milton J. Stern, deceased, was or became, insolvent and unable to pay the deficiencies in tax, penalties and interest thereon, here in dispute."

The petitioner for her reply alleges that there was no transfer made to her from the estate of Milton J. Stern [fol. 11] to the extent of said estate becoming insolvent and unable to pay the deficiencies in tax, penalties and interest thereon.

The petitioner in reply to Paragraph V (c) of the answer of the respondent, "that no part of the deficiencies in tax, penalties and interest thereon, ~~here in dispute~~, has been paid." The petitioner in reply to this paragraph of the answer states that payments have been made from various sources upon the deficiencies in tax, penalties and interest thereon.

The petitioner in reply to the answer of the Commissioner, Paragraph V (d), "that consequently, pursuant to Section 311A-1 of the Internal Revenue Code, the Commissioner became, and is now, liable as transferee of the estate of Milton J. Stern, deceased, for the deficiencies in tax, penalties and interest thereon, here in dispute," replies that she is not liable as the transferee of the estate of Milton J. Stern, deceased; or for the deficiencies in tax, penalties and interest thereon; that she has not received from the estate of Milton J. Stern assets in the aggregate fair market value of the amount of the deficiencies in tax, penalties and interest here in dispute, nor has she received any sums from the estate of Milton J. Stern; further that any sums that she may have received have been for good and valid considerations; further if she has received any sums that the aggregate fair market value of said sums is far less than the deficiencies in tax, penalties and interest. The petitioner did not become and is not liable as a transferee of the estate of Milton J. Stern.

V

In reply to Paragraphs VI (a), VI (b), VI (c), VI (d), VI (e), and VI (f) of the respondent's answer, the petitioner denies generally each and every allegation specifically contained therein. Further, the petitioner specifically denies that she is the transferee of any of the estate of Milton J. Stern, deceased; that she received any of the [fol. 12] estate of the deceased and further at no time was Milton J. Stern insolvent and further that if she should be held as the transferee of any assets the fair market value of said assets would be much less than the alleged tax, penalties and interest here in controversy.

Wherefore, it is prayed that the affirmative relief requested by the respondent in his answer be denied and that the court hold that the petitioner is not liable as transferee of the estate of Milton J. Stern, deceased, in the amount as alleged or in any amount.

Respectfully submitted, William H. Beck, 705 Security Trust Bldg., Lexington, Kentucky, Attorney for Petitioner.

IN THE TAX COURT OF THE UNITED STATES

STIPULATION OF FACTS—Filed June 14, 1955

It is stipulated that the following facts are true:

1. The petitioner, Jean F. Stern, also known as Eugenia F. Stern, is the widow of Dr. Milton J. Stern and resides in Lexington, Kentucky.
2. Dr. Milton J. Stern died on June 12, 1949, a resident of Lexington, Kentucky. Adalin Stern Wichman, his daughter, is executrix of his estate, which was duly admitted to probate in the County Court of Fayette County, Lexington, Kentucky.
3. The income tax liability of Dr. Milton J. Stern for the taxable years 1944 through 1947 was litigated before this court by his estate in Docket No. 31924. This court herein decided (Tax Court Memo. 1955-40) that the net income

and tax liability of that estate for Dr. Stern's income taxes for those years was as follows:

[fol. 13] Taxable Years	Net Income Determined	Income Tax Deficiency	Sec. 293(b) Penalty
1944.....	\$17,384.01	\$ 4,675.74	\$ 2,337.87
1945.....	21,604.28	6,470.01	3,235.01
1946.....	22,864.43	6,645.70	3,322.85
1947.....	20,427.35	3,885.27	2,205.06

These liabilities of Dr. Stern and his estate have not been paid. The assets of the estate are not sufficient to satisfy the foregoing liabilities for income tax and penalty.

4. The following shows the amount of life insurance carried by Dr. Milton J. Stern on his life at the time of his death, of which this petitioner was the beneficiary from the dates indicated up to the date of death, the cash surrender value of said policies as of the date of death, the amount of proceeds received in cash by the petitioner on certain policies, and the present values (figures at 4 percent) as at the date of death of future payments to be received by petitioner on the remaining policies:

Dkt. No. 51271

161. 14

Issued Date	Life Ins. Company	Policy Number	Face Amount	Date Petr. Named Beneficiary	Cash Surrender Value at Date of Death	Value of Proceeds to Petr. at Date of Death
7-26-30	Pacific Mutual	765279	\$ 5,000.00	7-26-30	\$ 1,685.00	\$ 5,001.65*
12-26-29	Pacific Mutual	743985	1,000.00	12-26-29	625.35	1,000.55*
9-30-11	Northwestern Mutual	895969	5,000.00	3-13-19	2,401.90	5,000.00*
9-9-15	Northwestern Mutual	1110950	5,000.00	3-13-19	2,321.00	4,034.65**
3-20-19	Northwestern Mutual	1196991	5,000.00	3-20-19	2,362.05	4,034.65**
3-20-19	Northwestern Mutual	1196992	5,000.00	3-20-19	2,362.05	4,034.65**
5-18-23	Northwestern Mutual	1656464	1,000.00	5-18-23	439.93	980.59*
10-6-28	Northwestern Mutual	21112085	3,000.00	7-11-34	1,180.89	2,420.79**
9-29-32	Northwestern Mutual	2438131	3,000.00	7-11-34	1,007.82	2,420.79**
6-30-32	Provident Mutual	690009	2,000.00	6-30-32	669.06	2,019.64*
4-24-31	Massachusetts Mut.	1007342	6,755.00	4-24-31	3,608.10	5,200.00*
4-25-34	Mut. Ben. of Newark	1629792	2,500.00	5-7-34	881.18	1,500.00**
10-5-28	Mut. Ben. of Newark	1367521	10,000.00	5-26-34	5,602.67	3,625.00**
9-2-21	Mut. Life of N. Y.	2940373	1,500.00	9-2-21	643.71	1,491.97*
11-4-35	Mut. Ben. of Newark	1702801	1,000.00	11-18-39	334.79	1,010.93*
7-10-33	Mut. Ben. of Newark	1594749	2,500.00	7-10-33	837.18	2,506.16*
1-6-34	Bus. Men's Assur. Co.	185314	1,000.00	1-6-34	297.00	1,000.00*
Totals					\$25,259.68	\$47,282.02

* Cash proceeds.

** Present value at date of death of future payments.

[fol. 15]. 5. Dr. Stern retained the right to change the beneficiary and to draw down the cash surrender value on each of the policies in paragraph 4 above.

6. At the time of the issue of all policies, except Northwestern Mutual No. 895969 issued September 30, 1911, Dr. Milton J. Stern was a resident of the State of Kentucky and continued to be one to the time of his death.

7. Dr. Milton J. Stern at the time of his death owned all of the following except the two items marked with an asterisk:

Stocks		\$ 3,468.15
*U. S. Treasury Bonds		7,800.00
Cash on deposit, First National Bank & Trust Co., Lexington, Ky.	\$ 1,313.70	
Cash in safe	723.00	2,036.70
<hr/>		
*Real estate:		
Farm of 10 acres, with improvements	21,000.00	
Residence, Dantzler Court, Lexington, Ky.	15,000.00	36,000.00
<hr/>		
Miscellaneous:		
Household furniture	4,921.25	
1 Cow	140.00	
Account Receivable	3,000.00	
Office Equipment	1,200.00	
Ford Automobile	900.00	
Optical Rebate Receivable	648.24	10,809.49
		<hr/>
		\$60,114.34

* The U. S. Treasury Bonds and real estate were held in joint titles with right of survivorship by Dr. Milton J. Stern and petitioner.

Although Dr. Stern left a will, petitioner has renounced that will and elected to take as widow under the Common-[fol. 16] wealth of Kentucky. To date no distributions have been made from that estate to petitioner.

(Sgd. Walter E. Barton, William H. Beck, Counsel for Petitioner; (Sgd.) John Potts Barnes, Chief Counsel, Internal Revenue Service, Counsel for Respondent.

IN THE TAX COURT OF THE UNITED STATES

MEMORANDUM OPINION—Filed January 26, 1956

MURDOCK, *Judge*: The Commissioner determined that the petitioner was liable as a transferee for deficiencies and

additions thereto for the years 1944, 1945, 1946 and 1947 due on income of Milton J. Stern. The only issue for decision is whether the petitioner is liable as a transferee. All of the facts in the record have been stipulated and, as stipulated, are adopted as the findings of fact.

The petitioner is the widow of Milton J. Stern, a doctor, who died testate on June 12, 1949, while residing in Lexington, Kentucky. The tax liability of Milton J. Stern for the years 1944 through 1947 has been decided by this Court in a prior proceeding and there is no dispute about the amounts owed. Those liabilities have not been paid and the assets of his estate are not sufficient to pay those amounts.

Milton carried a number of policies of life insurance on his own life in which Jean was named beneficiary prior to and up to the date of Milton's death. Milton retained the right to change the beneficiary and to draw the cash surrender value of each of those policies up to the date of his death. The total cash surrender value of the policies at the date of his death was \$27,259.68, and the value of the [fol. 17] proceeds of the policies to Jean at the date of Milton's death was \$47,282.02 consisting of cash proceeds and the then present value of future payments under the policies. The stipulation is that Milton "carried" the policies on his life and "retained the right to change the beneficiary and to draw down the cash surrender value on each of the policies." The Court concludes from the stipulation that Jean contributed nothing toward the payment of the premiums or the carrying of the policies.

This Court has held in *Christine D. Muller*, 19 T.C. 678, that:

* * * the Federal Government can follow the property of the transferor, including the proceeds of life insurance, into the hands of such a person [the beneficiary] for the purpose of collecting taxes lawfully due from the transferor, without regard to the limitations of state law. *Pearlman v. Commissioner*, 153 Fed. (2d) 560; *Kieferdorf v. Commissioner*, 142 Fed. (2d) 723; certiorari denied, 323 U. S. 733. * * *

The *Kieferdorf* case was an affirmance of *May R. Kieferdorf*, 1 T.C. 772, and the *Pearlman* case was an affirmance of *Florence Pearlman, Transferee*, 4 T.C. 34. See also

Sadie D. Leary, 18 T.C. 139; *Aura Grimes Bales, Transferee*, 22 T.C. 355. This Court has followed those cases in other cases and follows them in this case despite reversals in other cases. See *Rowen v. Commissioner*, 215 F. 2d 641 and *Tyson v. Commissioner*, 212 F. 2d 16, relied upon by the petitioner.

Decision will be entered for the respondent.

IN THE TAX COURT OF THE UNITED STATES

DECISION—Entered January 27, 1956

Pursuant to the determination of the Court, as set forth in its Memorandum Opinion, filed January 26, 1956, it is

Ordered and Decided: That the petitioner is liable as transferee of the Estate of Milton J. Stern, Deceased, for [fols. 18-20] income tax and additions to tax, together with interest thereon as provided by law, as follows:

Year.	Income Tax Deficiency	Additions to Tax Sec. 293(b)
1944	\$4,675.74	\$2,337.87
1945	6,470.01	3,235.01
1946	6,645.70	3,322.85
1947	3,885.27	2,205.06

Entered Jan. 27, 1956.

(Signed) J. E. Murdock, Judge.

[fols. 21-24] MINUTE ENTRY OF ARGUMENT AND SUBMISSION
—December 13, 1956

[Omitted in printing]

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH
CIRCUIT

JUDGMENT—Filed February 26, 1957

On Petition to Review a decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of record from the Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the decision of the said Tax Court in this cause be and the same is hereby reversed.

[fol. 25]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12840

JEAN F. STERN, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

ON PETITION for Review of Decision of the Tax Court

OPINION—Decided February 26, 1957

Before SIMONS, Chief Judge; STEPHENS* and McALLISTER,
Circuit Judges

McALLISTER, Circuit Judge:

Jean F. Stern, petitioner, was the beneficiary of seventeen insurance policies, of the face amount of \$60,255.00, on the life of her husband, Dr. Milton J. Stern, who died June 12, 1949. Dr. Stern, in the contracts of insurance, had reserved the right to change the beneficiary, as well as to draw the cash surrender value of the policies up to the time of his death. However, he never did draw any of the cash surrender values. Petitioner had been named beneficiary in the policies at various times between March 19, 1919—thirty years before her husband's death—and July 11, 1934—fifteen years before her husband's death.

Six years after Dr. Stern's death, respondent Commissioner of Internal Revenue, determined that petitioner was subject to the income tax liability of her deceased husband with regard to the proceeds of the life insurance policies on the ground that she was a transferee of such proceeds.

* Albert Lee Stephens of the Ninth Circuit.

and that the Estate of Milton J. Stern, Deceased, had transferred these proceeds to her. The Commissioner, in his answer to Mrs. Stern's petition, set forth that "during the year 1949, the estate of Milton J. Stern, deceased, without [fol. 26] consideration, diverted and transferred to petitioner, assets having an aggregate then fair market value of not less than the deficiency in tax, penalties and interest thereon, which are here in dispute," and that "by reason of said transfer, without consideration, from the estate of Milton J. Stern, deceased, to petitioner, said estate of Milton J. Stern, deceased, was, or became, insolvent and unable to pay the deficiencies in tax, penalties and interest thereon here in dispute." There was no evidence and no finding of insolvency as of any date prior to decedent's death; and there was no evidence or finding that decedent took out or maintained the policies with intent to hinder, delay or defraud his creditors. The Tax Court agreed with the respondent's contention and held that the government could follow the proceeds of the insurance policies into the hands of the beneficiary.

In *Tyson v. Commissioner of Internal Revenue*, 212 F. 2d 16, (C.A. 6), the same question was before this court, and the Commissioner contended in similar fashion that the beneficiary of a life insurance policy was a transferee of a deceased taxpayer in respect of the proceeds of life insurance received after the death of the deceased, under Section 311 of the Internal Revenue Code of 1939. However, in that case, we held that the widow who was the beneficiary of a life insurance policy of her husband's life and who received the proceeds thereof after his death was not liable for his unpaid income taxes, as transferee of her husband's assets, and in so holding, said: "The failure of the husband to change the beneficiary from his wife to his Estate is not a voluntary transfer of the proceeds of said policy within the meaning and scope of the Federal Transferee Statute, Section 311(a)(1)(f) of the Internal Revenue Code."

In *Rowen v. Commissioner of Internal Revenue*, 215 F. 2d 641, (C.A. 2), the court held that a widow, who in that case was a beneficiary of a life insurance policy of her deceased husband, was not liable as a transferee under Section 311. The court pointed out that Section 311 applied only to a transferee of the property of a taxpayer, and held that the widow was not a transferee with respect to the

proceeds of the policies, inasmuch as they had never been the property of the deceased taxpayer. The court distinguished Section 311, which was, by its express terms, limited to the collection of income tax obligations, from Section 812, in which the Estate Tax was imposed upon a beneficiary who had received the proceeds of a life insurance [fol. 27] policy "with respect to which the decedent possessed at his death any of the incidents of ownership." The court said that the "failure of Section 311(f) to extend the definition of a transfer to include a 'beneficiary' as was done by I.R.C. Section 900, for purposes of estate tax collection, we think supports our holding that for purposes of income tax collection, a beneficiary was not intended to be classed as a transferee *as to the proceeds of a policy.*" The court declared that while "Congress by specific legislation might have pre-empted the field, it has not chosen to do so. As a result, when Congress extended its general tax-collection procedure to the 'liability' of a transferee, it necessarily must have intended that the existence of liability should be determined by State law. Other than the State law, there is no source to which we may look for pertinent authority." *Rowen v. Commissioner of Internal Revenue*, 215 F.2d 641, 647 (C.A. 2).

In the instant case, the relevant State law is that of Kentucky, which was the State of domicile of petitioner and her deceased husband. According to the statutes of Kentucky, the lawful beneficiary of a life insurance policy is entitled to the proceeds of the policy as against the representatives or creditors of the insured. Section 655 of Kentucky Revised Statutes, 1936, and Section 304.691 of Kentucky Revised Statutes, 1953. Such State statute is applicable to the claim of the Federal government. *Rowen v. Commissioner of Internal Revenue*, *supra*; *United States v. Truax*, 223 F.2d 229 (C.A. 5). Petitioner, accordingly, is entitled to the proceeds of the insurance policies as against the claim herein asserted by respondent.

The Tax Court, however, in the instant case, stated that it would follow its own prior decisions in spite of numerous reversals of such holdings by the Courts of Appeal, specifically alluding to the decision of this court in *Tyson v. Commissioner*, *supra*, as well as the decisions in *Rowen v. Commissioner of Internal Revenue*; *supra*, *United States*

v. *Truax*, supra, and *United States v. New*, 217 F. 2d 166 (C.A. 7).

In *Stacey Manufacturing Co. v. Commissioner of Internal Revenue*, 237 F. 2d 605, this court said in a similar instance that "the tax court of the United States is not lawfully privileged to disregard and refuse to follow, as the settled law of the circuit, an opinion of the court of appeals for that circuit. If the tax court is not bound on questions of law by decisions of the appropriate circuit having jurisdiction, why should any jurisdiction be vested [fol. 28] in circuit courts of appeals to review decisions of the tax court? The district courts of the several circuits also have statutory jurisdiction in tax cases and they are bound to follow the rules of decision pronounced by the United States Court of Appeals having appellate jurisdiction over the particular District Court. The tax court is no less bound to do so. The mere fact that it is a court having jurisdiction in tax cases throughout the United States does not establish the tax court as superior in any aspect to the United States District Courts." We here reaffirm our opinion in *Tyson v. Commissioner of Internal Revenue*, supra.

Respondent Commissioner, however, still insists that the Tax Court's opinion should be here followed, in spite of the fact that this Court has expressly ruled to the contrary in *Tyson v. Commissioner of Internal Revenue*, supra; but, while so contending, submits that the decision of the Tax Court should also be sustained on what is termed "a lesser position"—that petitioner, if not liable as a transferee of the proceeds of the policies, is nevertheless liable as a transferee of the cash surrender value.

With respect to petitioner's liability as a transferee of the cash surrender value of the policies, we are of the view that petitioner is not so liable.

In the first place, she was not the transferee of the cash surrender value of the policies any more than she was the transferee of the proceeds of the insurance policies. The only person who had any right to receive the cash surrender value was petitioner's husband. After he died, there remained no cash surrender value. Petitioner did not receive the cash surrender value, but received something wholly different in character and in amount—the proceeds

from the insurance policies. As an instance; the cash surrender value to Dr. Stern at the time of his death of one of his policies was \$297.00. The value of the proceeds of the policy to Mrs. Stern was \$1,000.00. The cash surrender value was never the property of the widow. The life insurance proceeds were never the property of decedent or of his state. They were payable to the widow, not as part of decedent's estate, or as a transferee of his estate, but because her husband had entered into a speculative contract with the insurance company, many years before, that it would pay his widow these sums on a certain contingency — his death; and they further depended upon other contingencies that he would pay the premiums at certain stated times. Under the statute, petition would be liable for [fol. 29] her husband's income taxes only if she had received a transfer of his property at his death. Section 311(a)(1) of the Internal Revenue Code of 1939. She did not receive any transfer of his property at his death. It might well be that if the statutory provisions of the Estate Tax were here applicable to the cash surrender values, the widow would be liable as a beneficiary, since the decedent at his death possessed the incidents of ownership of, securing for himself such cash surrender values, Title 26 U.S.C.A., Section 811(g)(2), but this is not a case involving Estate Tax Collection, but, on the other hand, income tax collection; and under the provisions of the income tax statute, the beneficiary widow was not a transferee either of the proceeds of the life insurance policies, or of the cash surrender values.

We are cognizant of the holding by high authority that it is indisputable that policies similar to those in this case were assets of the decedent in his lifetime, as to their cash surrender values, and that, since, under the terms of the policies, nothing passed on his death, it is unrealistic to view his death as wiping out those values. Further, that under the policies, his death was merely the condition upon which the surrender values no longer were payable to the decedent, but became merged in the greater values which the insurers were obligated to pay the beneficiary. *Rowen v. Commissioner of Internal Revenue*, supra. However, with deference to the foregoing view, it appears to us that, upon the death of the insured, the cash surrender values no longer

existed. To say that the cash surrender values on the death of the insured became merged with the proceeds of the policies paid to the widow is figurative. If the cash surrender values became merged with the proceeds paid to the widow, it might be said perhaps that the cash surrender values, in case the policies were forfeited for nonpayment of premiums merged with the profits of the insurance companies. But such a figure of speech does not seem to point the way of resolving the issue.

To deprive the widow of the face value of the policies,—and permit the Collector to take the cash surrender values,—it must be held that the cash surrender values were assets of the decedent in his lifetime; that such cash surrender values were part of the proceeds of the policies paid to the widow; and that the widow received these cash surrender values, under the provisions of the income tax statute, as a transferee of the estate of her husband. None of these propositions seems valid.

[fol. 30] The cash surrender values were not assets of the decedent during his lifetime. In *Murphy v. Casey*, 150 Minn. 107, 184 N. W. 783, where policies of life insurance were issued to a man payable at his death to his mother, with the reserved right on his part as the insured to change the beneficiary at any time, and the option was reserved to the insured to receive the cash surrender values, on his demand, without right of restraint from the beneficiary, it was held that the right or option reserved to the insured to surrender the policies and demand the cash surrender values could not be attached or levied upon by a creditor whose claim arose subsequent to the issuance of the policies, so long as the right of the beneficiary to the ultimate payment of the policies, at the insured's demand, remain in force and effect. In the foregoing case, the applicable state statute provided:

“Whenever any insurance is effected in favor of another, the beneficiary shall be entitled to its proceeds against creditors and representatives of the person effecting the same.”¹

¹ The state statute here applicable is phrased in substantially the same terms: “When a policy of insurance is effected by any person on his own life or on another life

The sole issue, insofar as is here relevant, was the asserted right of the judgment creditor to resort to, and levy execution upon, the interest of the insured in the cash surrender options and values thereof. In deciding the case, the Supreme Court of Minnesota held that the policies in question, so long as they remained without change of beneficiary, by death or otherwise, were exempt from the claims of creditors; and that the interest of the insured, sought to be reached, was not available to such creditors. The court said "To grant the relief . . . would in our view of the matter wholly destroy the intent of the statute and deprive beneficiaries in such cases of the protection the Legislature intended to secure to them. While it is true that the insured may cash in his policy without regard to the wishes of the beneficiary, that reserved right, since the insurance was effected and taken out for the benefit of the latter, to give force and effect to the statute, must, as to creditors seeking to exercise it in the place and stead of the insured, be [fol. 31] deemed and held subordinate to the rights of the beneficiary. There are no sound reasons, either in morals or in equity and good conscience, why a creditor, to the detriment of the beneficiary, should be given the right and privilege of the insured in such cases. No credit is extended to the insured on the faith of the insurance, for all persons dealing with him are bound to know the law and that money to become due thereon when payable to a third person is exempt from their claims. The statute is wise in its purpose, securing as it does after the death of the insured, pecuniary aid and assistance to the beneficiary, usually someone who is dependent upon the insured for support, and should not be frustrated or impaired by opening the door to those who have no just or equitable claim to the money. The authorities sustain this view of the question. *In Re Johnson* (D.C.), 176 Fed. 591, involved the construction of our statute in Federal Bankruptcy proceedings in favor of some person other than himself, having an insurable interest therein, the lawful beneficiary thereof, other than himself or his legal representatives, shall be entitled to its proceeds against the creditors and representatives of the person effecting the same . . ." Section 655 of Carroll's Ky. Statutes (1936). To the same effect is Section 304.691 of Ky. Revised Statutes of 1953.

ceedings, and the conclusion stated was there applied. The court followed the rule of other federal courts and held that the insurance policy there involved did not pass to the trustee in bankruptcy, for the reason that *it was exempt under our statute to the beneficiary.* (Emphasis supplied.) *In Re Pfaffinger* (D.C.), 164 Fed. 526; *Holden v. Stratton*, 196 U. S. 202, 25 Sup. Ct. 656, 49 L. Ed. 1018; *Hiscock v. Mertens*, 205 U. S. 202, 27 Sup. Ct. 488, 51 L. Ed. 771. . . . To hold with plaintiff on either point would result in the destruction of rights the Legislature intended to secure to the beneficiaries in such insurance contracts. To extend to the creditor the option to surrender the policy for the cash value would wipe out the rights of the beneficiary altogether. . . . Other uncertainties and questions readily are suggested, all to the detriment of the beneficiary and all impairing the rights intended to be secured by the statute. The court should not create a situation which will bring about results of the kind.

In Re Pfaffinger, supra, was a case from the District Court for the Western District of Kentucky, and involved the identical state statute here before us. Under that statute it was provided that a lawful beneficiary designated in a life insurance policy other than the insured or his legal representatives, shall be entitled to the proceeds thereof as against the creditors or representatives of the insured. The trustee in bankruptcy of the insured sought the cash surrender values of the life insurance policies in which the insured's wife was beneficiary, and according to the terms of which, the insured had the right to change [fol. 32] the beneficiary with the company's consent. The trial court denied the trustee the right to secure the cash surrender values, declaring that the state statute, in the language heretofore quoted, *exempted such policies from liability to the demand of creditors*; that the effect of the Supreme Court's holding in *Holden v. Stratton*, supra, gave the Kentucky statute controlling influence in determination of the case; and that in *Lockwood v. Exchange Bank*, 190 U. S. 294, the Supreme Court had held that title to exempt property never passes to the trustee, and, accordingly, the District Court held that the cash surrender values did not pass to the trustee in bankruptcy in the case then before it.

It is true that these cases speak of life insurance policies as being exempt from liability to the demands of creditors; and, of course, it is well established that state exemption laws are ineffective against the statutory liens of the United States for federal taxes, and where federal statutes subject to taxation specified property over which the deceased possessed, during his lifetime, the incidents of ownership—such as securing for himself the cash surrender values of life insurance policies—as provided in the statutory provisions of the Estate Tax. But the exemptions mentioned in the foregoing cases are not the ordinary exemptions to which the insured, or the deceased, was entitled as a debtor, under the state laws or the bankruptcy statutes. The exemptions of which those cases speak are exemptions to the beneficiary of life insurance policies.

The cash surrender values were not part of the proceeds of the insurance policies paid to the widow, and to hold otherwise would seem to transform plain language to the advantage of the tax-gathering authority, and to the loss of the widow. The widow did not, in any sense, receive the cash surrender values as a transferee of the estate of her deceased husband. The rights of the parties to this suit, and the rights of all parties concerned in the contract of insurance, depended entirely upon the agreements executed between the insured and the insurance companies that it would pay the husband the cash surrender values, only on his demand, in lieu of paying his widow the amount of the policies after his death. If the insured did not demand such payment, the insurance companies were bound to pay the entire proceeds of the policies to the insured's wife, upon his death. There is a positive moral obligation upon a husband to protect his wife against destitution, by providing insurance for her in case of his death. After [fols. 33-34] a husband has paid premiums for thirty years to insure that his wife will be preserved from suffering and want, it would be contrary to public policy and inhumane to permit creditors, whose claims arose subsequent to the execution of the policies of insurance and subsequent to the payment of the premiums, to snatch from the widow, after her husband's death, the large cash surrender values merely because of the provision in which the husband had reserved a right thereto, which he had never exercised.

No statutes require that such hardship be inflicted upon a widow, whose husband has continuously, during the long course of their marriage, sought to protect her, by providing insurance against the day when she would be left alone.

In this case, the government is in no better position than any other creditor. The insurance was not built up, nor were the premiums paid, at the expense of the government, or in fraud of the government.

In accordance with the foregoing, it follows that petitioner is not liable as a transferee of decedent's estate, or of decedent, in respect of the income taxes and penalties claimed; and the decision of the Tax Court is, therefore, reversed.

[fols. 35-36] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 37-38] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1956

No. —

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

VS.

JEAN F. STERN (Transferee)

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF
CERTIORARI—May 23, 1957

Upon Consideration of the application of counsel for petitioner.

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be; and the same is hereby extended to and including July 26, 1957.

Harold H. Burton, Associate Justice of the Supreme
Court of the United States.

Dated this 23rd day of May, 1957.

[fol. 39] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1957

No. 311

[Title omitted]

ORDER ALLOWING CERTIORARI.—OCTOBER 14, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.